cient to show such failure to deprive the agent of any right to commissions."

9. "If the jury believe from the evidence that the plaintiff is entitled to recovery, not under the contract, but on account of services, then such amount must be based upon the value of the plaintiff's services, less any loss that may have been caused by the failure of the plaintiff to carry out the special contract proved in this case."

Williams & Mullen, for plaintiffs in error.

Braxton & Eggleston and *R. W. Tomlin,* for defendant in error.

JACKSON COAL & COKE CO. et al. *v.* PHILLIPS LINE et al. SEWARD & ROPER *v.* SAME.

June 13, 1912.

[75 S. E. 681.]

1. **Receivers** (§ 196*)—**Compensation—Charges.**—Receivers, operating under the orders of the court the business of the insolvent company, though unsuccessfully, not being charged with bad faith, are entitled to allowance of reasonable compensation for their services, and a fortiori cannot be chargeable with the expenses of operation.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 659-661; Dec. Dig. § 196.*]

2. **Receivers** (§ 153*)—**Liens—Priorities—Receivership.**—The state and city having no lien on the personal property of an insolvent, which went into the hands of receivers, for the taxes previously assessed thereon, they never having exercised their right of levy or distress; priority of payment should not be given therefor, but only for the taxes thereafter assessed against and due from the receivers.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 467-471; Dec. Dig. § 153.*]

3. **Receivers** (§ 202*)—**Accounting—Motion to Surcharge.**—The motion to surcharge the accounts of the receivers being accompanied by no data on which the court could ascertain with any degree of certainty what items or matters were complained of, it was too vague and indefinite to warrant entertaining it, especially when it was accompanied with a disclaimer of any intention to impute bad faith to the receivers.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 669, 670; Dec. Dig. § 202.*]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am Dig. Key No. Series & Rep'r Indexes.

4. Receivers (§ 155*)—Payment of Claims—Priorities—Expenses.—Though the bill for a receiver was filed by the trustees for creditors, to whom an insolvent company made an assignment, yet, the receivership being at the instance and for the benefit of the bondholders of the company, that it might, if possible, be sold as a going concern, expenses incurred in an effort to carry on the business through the receivers will be preferred in distribution of the assets to the claim of the bondholders, by reason of their having had to pay under a bond given by them to have a steamer of the company released from a libel which had been sued out against it, before the assignment, though the court, by its decree authorizing the receivers to have the steamer released, provided, if said bondholders had to pay the libelant anything in accordance with the terms of the bond, they should be subrogated to libelant's right of priority of payment out of the proceeds of the steamer.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 474-476; Dec. Dig. § 155.*]

Appeals from Hustings Court of Petersburg.

Suit was filed by Bartlett Roper, Jr., and J. A. C. Groner, trustees, against the Phillips Line and others, for a receivership. From a decree ruling on exceptions to a master commissioner's report filed in such suit, two appeals, one by the Jackson Coal & Coke Company and others, and the other by Joseph W. Seward and Le Roy Roper, are taken. Reversed and remanded.

In Appeal of Jackson Coal & Coke Company et al.:

Hughes & Little, Willcox & Willcox, Harry E. McCoy, and *W. McK. Woodhouse,* for appellants.

Carl H. Davis, Richard B. Davis, Chas. E. Plummer, Wm. B. McIlwaine, and *Geo. Mason,* for appellees.

In Appeal of Seward & Roper:

Carl H. Davis, Richard B. Davis, and *Paul Pettit,* for appellants.

Hughes & Little, Willcox & Willcox, Harry E. McCoy, W. McK. Woodhouse, and *W. B. McIlwaine,* for appellee.

HONAKER *v.* STARKS.

Sept. 9, 1912.

[75 S. E. 741.]

1. Wills (§ 449*)—Construction—Property Disposed of.—Where testatrix owning five shares of stock in a bank, disposed of her estate,

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.